

DEPARTMENT OF STATE REVENUE

FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 95-0720

Sales Tax

Calendar Years 1991, 1992, and 1993

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ISSUE(S)

- I. **Gross Retail Tax** – Method of assessment used by auditor

Authority: IC 6-8.1-5-1; IC 6-8.1-5-4; 45 IAC 2.2-4-2

Taxpayer protests the method of assessment used by the auditor.

STATEMENT OF FACTS

The taxpayer was incorporated on January 4, 1991 under the laws of the State of Indiana. The taxpayer acts as a retail merchant or a contractor depending on the particulars of the job. The taxpayer collected, but failed to remit certain amounts of sales tax. The taxpayer cancelled numerous appointments for the audit as well as hearings. Taxpayer was granted a rehearing as requested in a letter dated February 1, 1999 with the stipulations that detail be provided at hearing.

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DISCUSSION

At issue is whether the taxpayer's sales and purchases as shown on departmental records are correct.

At hearing taxpayer provided the department with examples of invoices indicating they were labor or already taxed, and worksheets indicating the assessment was doubled in some cases as the auditor utilized taxpayer's listing of individual customers and then also the summary sheets.

A review of those invoices indicates that miscellaneous items are included such as freight, tax, labor, drop charges, and miscellaneous. Audit has utilized the material portion shown on taxpayer's cost of goods sold schedule from the federal income tax return as a basis for taxation. A review of the audit indicates the auditor did not review a major portion of purchase invoices as they were unavailable and taxed the entire amount in cost of goods sold less tax exempt invoices available. A credit for purchases was correctly credited for the cost of goods sold and included in taxpayer's sales tax calculation. No projection was utilized to obtain a percentage relating to the amount exempted, already taxed, or not taxed; but the remaining balance was subjected to tax. As shown by the taxpayer, some of the invoices have other costs besides taxable materials and should be exempt. The department will utilize the percentage calculated from the taxpayer's audit amount in 1991 divided by the total gross receipts shown on its form 1120 and apply the percentage to the gross receipts shown on the federal form 1120 for 1992 and 1993. A credit will be given for the amount of tax remitted on taxpayer's ST-103's. Taxpayer has been advised at hearing to keep records and to correctly report tax due.

FINDING

Taxpayer's protest is sustained in part and denied in part. Audit will prepare a supplemental audit assessing tax on .0068039 of taxpayer's gross receipts. 1991 remains in effect as shown on the audit.